



DEPARTMENT OF JUSTICE

Antitrust Division

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Marc Peterzell, Esq.
Arnall Golden & Gregory
1201 West Peachtree Street
Atlanta, GA 30309-3450

Dear Mr. Peterzell:

This letter responds to your request, on behalf of Georgia Preferred Podiatric Medical Network (the "Network"), an affiliate of the Georgia Podiatric Medical Association (the "Association"), for the issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, regarding the Network's proposal to act as an intermediary for the solicitation and management of managed care contracts between its members and third party payors. For the reasons set forth below, the Department has no present intention to challenge the proposed activities under the antitrust laws.

The Association is a Georgia not-for-profit corporation, the professional association of podiatrists in Georgia. The Network is a not-for-profit Georgia corporation sponsored by and affiliated with the Association. There are 212 licensed podiatrists in Georgia, of which 187 are members of the Association. Any Association member is eligible to join the Network, which currently has 92 members, or 43.4% of the licensed podiatrists in the state. No upper limit has been set on the number of Association members who may join the Network; however, the Network is non-exclusive. All participating podiatrists are free to join other panels and networks.

The Network will employ a "messenger model" to solicit managed care payor contracts, seek to obtain and expand other panel opportunities for its members, and serve as a conduit for communication between the membership and third-party payors. Thus, when soliciting payor contract offers, the Network will employ or contract with an agent, who may transmit to payors price lists, schedules and other information obtained from each individual doctor or practice group about the prices and contract terms and conditions they are willing to accept. The agent will then circulate any proposed contracts from third party payors to the members, each of whom would be free to accept or reject such contracts, or to negotiate contract offers or terms directly

with any willing payor. Participating podiatrists will not discuss among themselves the terms of any contract offers.¹

At the specific written request of a payor, the agent may discuss with the payor such potentially competitively significant non-price issues as utilization review, credentialing, and quality assurance standards. In doing so, however, the agent will not agree to any such standards on behalf of the members or in any way attempt to require a payor to adopt any particular standards. Rather, the agent will transmit all information and offers from the payor to each member, and each member will decide unilaterally, and without any discussion with the agent or other members, whether to accept the payor's terms and conditions.²

The Network will provide credentialing, utilization review and quality assurance monitoring, claims processing and other administrative functions, and dispute resolution services as requested.

After consideration of the information you have provided, as supplemented by our independent inquiry, the Department has no present intention to challenge the proposed activities of the Network on antitrust grounds. We conclude that the Network will function as a *bona fide* messenger to facilitate contract agreements between managed care plans and its members. The Network will not negotiate fees on behalf of its members, and each member will be free individually to accept or reject any contract proposal developed by the Network. We understand that each member will make that decision independently, without consultation with competitors or influence by the Network, and that members will be bound not to discuss among themselves the terms of such offers.

Additionally, discussions with the agent that may be requested by payors concerning non-price issues, such as utilization review and practice standards, may be efficiency enhancing, since they will be undertaken at the request of managed care plans and may assist the plans to develop effective standards of care and cost controls. It is our understanding that such discussions will not be used to facilitate collusive behavior among the Network's members.

Finally, the Network will not be exclusive. Many podiatrists in Georgia are already members of networks and panels serving managed care enrollees. The freedom of Network members to continue to participate in such contracts, to join other networks, or to contract directly with other managed care plans should mean that the Network will not inhibit the continuation of existing networks or the development of new networks that will foster managed care competition among podiatrists in Georgia.

Consequently, the Department of Justice has no present intention of challenging the proposed Network as described in this letter. In accordance with our normal practice the

¹ The Network may, however, provide a legal hotline for participating members to contact regarding terms of a contract offered to the membership. On the hotline, legal counsel familiar with a contract offer would provide advice on the legal effect of contract language. Hotline counsel will not negotiate contract terms on behalf of any participating podiatrist, or offer advice on fee schedules or amounts.

² See Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust issued by the U.S. Department of Justice and the Federal Trade Commission, September 27, 1994, at pp. 94-96 (Messenger Model). We understand that the Network's operations will conform to this description of a Messenger Model.

Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the Network proves to be anticompetitive in purpose or effect. In this regard, should Network activities result in express or tacit collusion among competing podiatrists on pricing or other significant contracting issues, serious antitrust concerns would be presented.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under Paragraph 10(c) of the Business Review Procedure also will be made publicly available.

Sincerely yours,

/S/

Anne K. Bingaman
Assistant Attorney General